

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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|-----------------------------------|---|-----------------------|
| Patrick Lamar Harris, #90539-071, |) | C/A No. 3:08-1577-CWH |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Warden, FCI-Estill, |) | |
| |) | |
| Respondent. |) | |
| |) | |

On April 14, 2008, Patrick Lamar Harris (“petitioner”) commenced this action seeking a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. The petitioner was convicted in a jury trial that took place over several days in October of 1994. On May 4, 1995, the Court sentenced the petitioner to 262 months in federal custody for violation of 21 U.S.C. §§ 841(a)(1) and 846. On April 29, 1997, the petitioner’s conviction and the conviction of his co-defendants were affirmed by the Fourth Circuit Court of Appeals.

On September 23, 1998, the petitioner moved to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On July 6, 1999, the government filed a motion for summary judgment asking that the petition be dismissed. On March 21, 2000, the Court denied the defendant’s § 2255 motion. On March 24, 2000, the Court granted the government’s motion for summary judgment and dismissed the action with prejudice. On March 29, 2001, the Fourth Circuit Court of Appeals denied the defendant’s motion for a certificate of appealability and entered an order affirming this Court’s denial of the § 2255 petition. While the petitioner’s appeal was pending in his § 2255 case, he filed a series of post-judgment motions in his criminal case in this Court. On August 27, 2001, the Court denied all pending motions and informed the

petitioner that no further motions to reconsider or to alter, amend, or vacate would be considered. The petitioner's appeal from the denial of his various post-judgment motions was not successful.

On January 30, 2004, the petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On January 10, 2006, that case was dismissed, and on September 29, 2006, the Fourth Circuit affirmed the dismissal of the case. On July 9, 2007, the petitioner filed a second § 2255 motion in his criminal case. On November 11, 2007, the motion was dismissed by the Court without prejudice to allow the petition to seek permission from the Fourth Circuit Court of Appeals to file a second or successive motion pursuant to 28 U.S.C. § 2255. The petitioner did not seek authorization for a successive § 2255 motion. On November 26, 2007, the petitioner filed a motion for reconsideration, which was denied on March 24, 2008.¹ On April 14, 2008, the petitioner filed another § 2241 petition claiming that his convictions and sentence should be vacated because they are allegedly the result of the United States' use of perjured testimony against him.

On May 9, 2008, Magistrate Judge Joseph R. McCrorey ("Magistrate Judge McCrorey") issued a report analyzing the issues and recommending that the Court dismiss the petition without prejudice and without issuance and service of process. Magistrate Judge McCrorey held that the allegations in the petition are cognizable as claims only under § 2255 and not § 2241 and that the petitioner has not adequately shown that his is an exceptional case in which the § 2255 remedy is inadequate or ineffective.

A notice was attached to the magistrate judge's report and recommendation providing the

¹ On July 23, 2008, the petitioner appealed the Court's order on the motion for reconsideration.

petitioner ten days during which to file written objections. Specifically, the notice stated that “failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right appeal from a judgment of the District Court based upon such Recommendation.” To date, no objection has been filed. Accordingly, Magistrate Judge McCrorey’s report and recommendation is adopted, and this action is dismissed without prejudice.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "C. Weston Houck". The signature is written in a cursive, flowing style. The first letter "C" is large and loops around. The name "Weston" is written in a standard cursive, and "Houck" follows with a similar style. The signature is positioned above a horizontal line.

**C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE**

July 24, 2008
Charleston, South Carolina